

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF  
THE CITY OF SAN JOSE

MEMORANDUM

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| TO: OVERSIGHT BOARD   | FROM: DEBRA FIGONE<br>EXECUTIVE OFFICER |
| SUBJECT:<br>SEE BELOW | DATE:<br>JUNE 21, 2013                  |

SUBJECT: APPROVAL OF AMENDED AND RESTATED DISPOSITION AND  
DEVELOPMENT AGREEMENTS FOR DEVELOPMENT OF THE  
NORTH SAN PEDRO HOUSING PROJECT

RECOMMENDATION

It is recommended that the Oversight Board adopt a resolution:

- (a) Approving an Amended and Restated Disposition and Development Agreement with North San Pedro Townhomes LLC ("NSPT") to amend and restate in its entirety an existing Amended and Restated Disposition and Development Agreement dated June 19, 2007 as amended by that certain First Amendment to Amended and Restated Disposition and Development Agreement dated December 14, 2010 to amend, among other things, the Schedule of Performance and to modify the Phases; and
- (b) Finding that the Amended and Restated Disposition and Development Agreement between NSPT and the Successor Agency is in the best interest of the taxing entities; and
- (c) Approving an Amended and Restated Disposition and Development Agreement with San Pedro Life I, LLC ("SPL") to amend and restate in its entirety an existing Amended and Restated Disposition and Development Agreement dated June 26, 2007 as amended by that certain First Amendment to Amended and Restated Disposition and Development Agreement dated December 14, 2010 to amend, among other things, the Schedule of Performance and to modify the Phases; and
- (d) Finding that the Amended and Restated Disposition and Development Agreement between SPL and the Successor Agency is in the best interest of the taxing entities; and

- (e) Directing Successor Agency staff to include on the Long Range Property Management Plan the disposition and development of the properties included in the above referenced Amended and Restated Disposition and Development Agreements as more particularly described therein.

## OUTCOME

Approval of the proposed actions will provide Oversight Board direction to the Successor Agency with respect to the disposition and development of certain real property to be included on the Long Range Property Management Plan and will enable the Successor Agency to retain and utilize \$24.16 million in grant funding from the State, re-establish the Julian Street grid system, widen St. James Street and develop needed market rate and affordable housing on the North San Pedro Housing Site.

## BACKGROUND

### North San Pedro Housing Site

In September 2003, the former Redevelopment Agency of the City of San Jose ("Agency") acquired 5.28 acres in Downtown San Jose in the area generally located in the blocks bounded by Highway 87 to the west, West Saint James Street to the south, North Market Street to the east and a Union Pacific Railroad right of way to the north. This property, combined with existing Agency-owned and State-owned surplus property, which was subsequently acquired by the Agency, created a significant development site of approximately 9 acres ("Site"). A map of the North San Pedro Housing Site is attached.

### Development of the Site

In December 2003, the Agency issued a Request for Proposals (RFP) for the development of the Site. Barry Swenson Builder and The Olson Company were selected by the Agency Board in August 2005 to develop a planned mixed use residential project on the Site. As part of the original project, the City and Agency planned to realign Julian Street and make necessary infrastructure improvements, including a park. The project was subsequently delayed while several alternative land uses for the Site were studied by the Agency.

In June 2007, the Agency Board approved separate Disposition and Development Agreements ("DDAs") with Barry Swenson Builder and The Olson Company. Barry Swenson Builder subsequently formed San Pedro Life I, LLC ("SPL") to be the developer under its DDA and The Olsen Company subsequently assigned its DDA to North San Pedro Townhomes ("NSPT"). In December 2010, the DDAs with SPL and NSPT were amended to address various issues, including the use and disbursement of

certain grant funds discussed below and additional requirements regarding the affordable housing component of the Project, including the selection of First Community Housing ("FCH") as the affordable housing developer for the Project.

#### Proposition 1C IIG Grant

On February 2, 2009, the California Department of Housing and Community Development (HCD) issued a Notice of Funding Availability (NOFA) for the Infill Infrastructure Grant (IIG) established under the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C). The primary objective of the IIG Grant is to promote infill housing development. The Agency, SPL, NSPT and FCH applied for and were awarded an Infill Infrastructure Grant (Grant) for the North San Pedro Housing Project in the amount of \$24.16 million. In applying for the Grant, the parties agreed to provide 135 units of affordable housing at reduced affordability levels. This component of the Project was critical to obtaining the Grant and is a condition of the Grant. FCH is the affordable housing developer for the Project and will be developing a 135 unit affordable housing project to satisfy the Grant requirements. The Grant will be used to fund land acquisition costs, infrastructure improvements including the realignment of Julian Street and park improvement costs.

Working with HCD, the parties negotiated and executed several documents necessary to obtain the Grant. During negotiations of the Grant documents, the phasing of the Project was changed in response to HCD concerns that a majority of the units were being constructed in the later phases. Ultimately, as required under the DDAs, the parties entered into the Standard Agreement and the Disbursement Agreement with HCD. After execution of the agreements with HCD, the parties commenced to negotiate the amended and restated DDAs to amend the schedules and to incorporate changes to the phasing of the Project.

#### Allocation of Sales Proceeds

In March, 2011, the Agency and the County of Santa Clara ("County") entered into a settlement agreement ("Settlement Agreement") relating to the payment of certain passthrough payments. As part of the Settlement Agreement, the Agency assigned fifty percent (50%) of the sales proceeds from the sale of the North San Pedro Housing Site to the County and recorded a deed of trust against the North San Pedro Housing Site to secure the obligations under the Settlement Agreement.

### Dissolution of Redevelopment

On or about June 28, 2011, the Governor signed into law ABX1 26, as subsequently amended by AB 1484, which provided for the dissolution and winding down of redevelopment agencies throughout the State of California ("Dissolution Legislation"). On February 1, 2012, pursuant to the Dissolution Legislation, the Agency was dissolved and, upon dissolution, all assets, properties and contracts of the Agency, including the original DDAs, were transferred, by operation of law, to the Successor Agency.

### ANALYSIS

Given the complexity of the Project, the number of parties involved and the uncertainties surrounding the dissolution of redevelopment, the negotiation and execution of the documents required for the State grant funding took longer than anticipated, which requires that the schedule of performances in the DDAs be updated. In addition, the change in the phasing to address HCD concerns also requires certain changes to the documents. Therefore, the Disposition and Development Agreements now need to be amended to update the Schedule of Performance and to realign the Phases among the Developers.

### PROJECT DESCRIPTION

#### NSPT –Market Rate Housing Development

The original NSPT proposal included four (4) phases, three of which were townhome developments consisting of a total of approximately 82 units and one phase of which was a multi-storied apartment development of approximately 102 units. To address HCD concern that a majority of the units were being constructed in the later phases, SPL agreed to assign its first phase to NSPT, which together with NSPT's 102 unit apartment development, created a "super-block" of approximately 412 units.

Under the proposed Amended and Restated DDA with NSPT, the NSPT project now consists of the following phases:

- Phase I - a 21 unit townhome project located on Block C,
- Phase II - a 412 unit apartment project on Block B/F,
- Phase III - a 14 unit townhome project on Block D, and
- Phase IV - a 42 unit townhome project on Block A.

The DDA does provide NSPT with flexibility in the ordering of the phases and the number of units in each phase.

### SPL-Market Rate Housing Development

SPL's original proposal included three (3) phases, each of which was a high-rise residential tower containing at least 125 units per tower, and totaling no less than 375 units. With the assignment of SPL's first phase to NSPT, SPL will now construct two towers in two phases, totaling approximately 250-300 units. The DDA provides SPL flexibility in the ordering of the phases and the number of units in each phase.

### FCH-Affordable Housing Development

FCH will be building the affordable housing component for the project. The 135-unit affordable housing development includes 118 studios, 16 one-bedroom units and 1 two-bedroom manager's unit. The affordable housing development will make units available to persons and families of very low to extremely low income. Forty-five (45) of the units will serve special needs populations diagnosed with developmental disabilities. To achieve this deeper level of affordability, which was required to obtain the Grant, the Agency agreed to provide affordable housing assistance to the Project under the original DDAs. The affordable housing assistance consists of a \$2.5 million grant to be used towards construction of the affordable housing development, together with the affordable housing site, which will be transferred to FCH at no cost.

The total number of units to be developed for the Project has increased to approximately 875-925 units. This represents an increase in density for the project from 95 dwelling units per acre to 135 dwelling units per acre.

### HCD Grant Funding

The Grant will pay for street and other infrastructure improvements, including the realignment of Julian Street and the restoration of the grid pattern, from Julian Street south to West Saint James Street (collectively, "Infrastructure Project"). The Successor Agency has worked with the City's Departments of Transportation and Public Works to develop an approved set of construction plans to convert West Saint James Street to a two-way thoroughfare. The realignment will improve access to the northern portion of the Downtown Core and minimize through traffic in the neighborhood to be built on the site.

The Project is subject to the City's Parkland Dedication Ordinance (PDO), which requires that projects either provide park facilities for the project or pay park in lieu fees. The Infrastructure Project includes the design and construction of a new park of approximately 1 acre north of Julian Street and the expansion of Pellier Park. The costs associated with the design and construction of these parks will be covered by the Grant. The Pellier Park expansion will occur during the initial Infrastructure Project and the new park will be built in the final phases of the Project. If the design and construction of the

parks does not satisfy the PDO requirements, any remaining PDO fees may also be reimbursed from the Grant.

### SCHEDULE

The realignment of Julian Street and construction of the Infrastructure Project will need to be completed prior to construction of the housing developments. The Infrastructure Project is anticipated to commence in mid-2014 after completion of design and construction documentation. The Infrastructure Project is expected to take approximately 12-14 months. It is anticipated that construction of the first housing phases will begin after completion of the Infrastructure Project and the build out will extend over an approximate six-(6) year period. The anticipated commencement date for each phase is shown on the proposed Map attached hereto.

### PURCHASE PRICE:

#### NSPT Purchase Price

| Phase     | Site      | # of Units | Price       | Price per Sq Ft |
|-----------|-----------|------------|-------------|-----------------|
| Phase I   | Block C   | 21         | \$1,613,121 | \$75.45         |
| Phase II  | Block B/F | 412        | \$9,587,058 | \$93.52         |
| Phase III | Block D   | 14         | \$1,095,685 | \$75.45         |
| Phase IV  | Block A   | 42         | \$4,703,553 | \$75.45         |

The Phase I site, Block C, purchase price shall remain fixed. For the remaining sites, the original per square foot price is subject to an annual adjustment described below. The annual adjustment is to encourage the progressive development of future phases while preserving a fair market price.

The annual adjustment is an amount equal to the change in the Federal Housing Finance Agency All Transactions Index for Metropolitan Statistical Areas and Divisions (Not Seasonally Adjusted) for the San Jose-Sunnyvale-Santa Clara market statistical area ("Index") calculated as the annual appreciation or depreciation from June 19, 2008 to the close of escrow for each Phase. The maximum increase or decrease in the Purchase Price for any Site shall not exceed an annual increase or decrease of three percent (3%) (compounded annually).

The Block B/F site combines the per square foot price of \$75.45 (which is subject to adjustment) for Block B with the fixed price of \$5,840,000 for Block F. The square foot price shown in the table above is the blended per square foot price for both Block B and Block F. The fixed price for Block F is the negotiated price from the DDA with SPL that is being assigned to NSPT.

The purchase prices for NSPT takes into consideration the risk associated with construction of the Infrastructure Project and park improvements prior to commencement

of the housing projects. With the purchase price subject to an adjustment tied to the local real estate market conditions, the purchase price will continue to reflect the current fair market value for the properties at the close of escrow for each phase of the Project.

#### SPL Purchase Price

The purchase price of the SPL sites shall be determined by an appraisal completed within 70 days of the effective date of the DDA. If SPL closes escrow within six (6) months of the date of the appraisal, the purchase price will be the appraised value. After six (6) months from the date of the appraisal, the purchase price will be subject to an annual adjustment described below.

If SPL does not close escrow by the completion of the infrastructure project, a new appraisal will be required to factor in the improved site conditions as a result of the Infrastructure Project. If SPL closes escrow within six (6) months of the date of the new appraisal, the purchase price will be the new appraised value. After six (6) months from the date of the new appraisal, the purchase price will be subject to an annual adjustment described below.

The annual adjustment is an amount equal to the change in the Index calculated as the annual appreciation or depreciation from the date of the appraisal to the close of escrow for each Phase. The maximum increase or decrease in the Purchase Price for any Site shall not exceed an annual increase or decrease of three percent (3%) (compounded annually).

#### BENEFIT TO TAXING ENTITIES

The amendment and restatement of the DDAs is in the best interests of the taxing entities. First, the \$24 million in Grant funds allows the realignment of Julian Street, which creates two (2) additional parcels that can be sold and developed, thereby maximizing the value of the North San Pedro Housing Site. The loss of two development sites created with the realignment of Julian Street would result in a loss of sales proceeds estimated in the range of \$5 to \$7 million. The additional sales proceeds will directly benefit the taxing entities by allowing the Successor Agency to pay down debt, thereby accelerating the ability of the taxing entities to receive revenue through the waterfall provisions of the Dissolution Legislation.

Additionally, the amendment and restatement of the DDAs provides for the near term development of over 400 residential units in two (2) phases, which will increase the tax revenue available for all of the taxing entities. NSPT has applied for permits for all of its phases and has already held two (2) community meetings soliciting comments from the public. Upon substantial completion of the Infrastructure Project, NSPT is ready to acquire and commence construction of its initial phases.

### LONG RANGE PROPERTY MANAGEMENT PLAN

Under the Dissolution Legislation, the Successor Agency is required to complete a Long Range Property Management Plan (LRPMP) to address the use or disposition of the Successor Agency's real property assets. Successor Agency staff request that the Oversight Board direct staff to include the properties in the LRPMP for future disposition and development subject to the terms of the proposed DDAs with NSPT and SPL. Successor Agency anticipates bringing the LRPMP forward to the Oversight Board for consideration in September 2013.

### EVALUATION AND FOLLOW-UP

Successor Agency staff will continue to return to the Oversight Board regarding status of the project.

### PUBLIC OUTREACH/INTEREST

- ✓ Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- ☐ Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- ☐ Criterion 3: Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This action meets Criteria 1 above and will be posted to be considered by the Oversight Board on the June 27, 2013 meeting.

### COORDINATION

This item was coordinated with the City Attorney's Office and the County of Santa Clara.

### FISCAL IMPACT

The recommended actions will enable the Successor Agency to receive \$24.16 million in grant funding from the State to complete the required land acquisitions and infrastructure development for the proposed project. Additional sources of revenue from Agency land sales to the Developers will result in revenues forecasted in an amount in excess of \$30



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million subject to appraisals and future market conditions. Fifty percent (50%) of the sales proceeds will be paid to the County pursuant to the assignment described above. The City, through its City's Housing Department, will provide grant funding in the amount of \$1.6 million to FCH for the affordable housing component of the project and the Successor Agency will provide \$900,000 of financial assistance from bond proceeds. The future revenues and expenditures will be reflected in the applicable future fiscal year budgets.

CEQA

Brandenburg Mixed Use Project/ North San Pedro Housing Sites Project GPT03-03-01a and GP03-03-01b.

  
DEBRA FIGONE  
EXECUTIVE OFFICER

Attachments

For more information, contact Richard Keit, Managing Director, Successor Agency, at 408-795-1849.

**ATTACHMENT NO. 1**

**DEVELOPMENT SITE**



ATTACHMENT NO. 2  
PROPOSED MAP

# Exhibit A

